

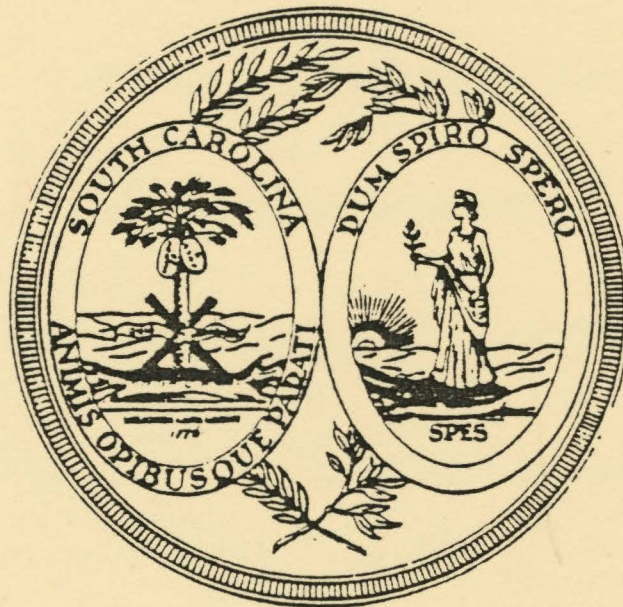
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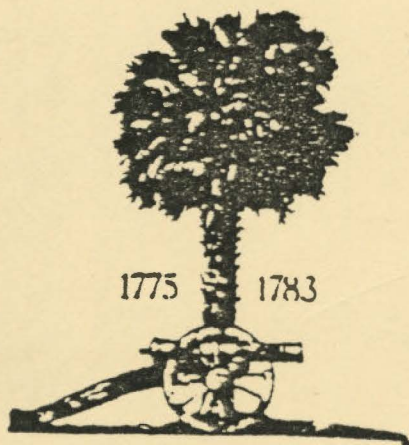
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STATE DOCUMENTS

# South Carolina General Assembly



## Legislative Audit Council



South Carolina General Assembly  
Legislative Audit Council  
Sunset Review of the Board of  
Examiners for Nursing Home  
Administrators  
June 28, 1979

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

SUNSET REVIEW OF THE BOARD OF EXAMINERS

FOR

NURSING HOME ADMINISTRATORS

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## REPORT SUMMARY

In July 1978 the General Assembly passed Act 608 which has become known as the "Sunset Act." This Act abolishes specific boards and commissions as of predetermined dates and requires the Audit Council to review each board one year prior to its termination date. The Board of Examiners for Nursing Home Administrators is scheduled to terminate on June 30, 1980. The Board consists of nine members, two of which are public representatives. The Legislative Audit Council has determined that the South Carolina Board of Examiners for Nursing Home Administrators should remain in existence. Federal Law and Regulations mandate that the State have a licensing board and termination would have adverse financial effects on nursing home patients. However, the Council has determined that the Board should be placed under the Department of Health and Environmental Control (DHEC) and that DHEC should assume the administrative functions currently performed by Board staff.

The Audit Council reviewed the Board's regulatory duties, functions, policies, procedures and administration, and found several important tasks which the Board does not adequately perform.

- (1) The Board does not investigate consumer complaints nor do they follow up on complaints referred to the Department of Health and Environmental Control (DHEC) and the Governor's Office. This is in violation of Federal Regulations and is contrary to the Board's own "statement of mission."
- (2) The Board does no ongoing evaluation of the performance of nursing home administrators and does not receive data from

evaluations of this type conducted by DHEC and the South Carolina Chapter of the American Health Care Association.

- (3) The Board has not actively considered requiring continuing education for nursing home administrators even though the great majority of states have found that this requirement significantly increases the competency of administrators and the level of health care.

The Council has concluded from its review that the Board should be restructured and placed under the Department of Health and Environmental Control. While the Board must maintain its autonomy, DHEC should assume the administrative and clerical duties currently performed by the Board's staff. This consolidation will result in better coordination between the Board and DHEC and provide for more effective regulation of nursing home administrators. This would place the Board in a position where it could be more directly involved in several important areas such as:

- (1) Complaints investigation - The Board could work directly with DHEC's Division of Health Licensing which investigates complaints.
- (2) Evaluation - The Board could utilize evaluation data gathered by DHEC in order to measure the effectiveness of nursing home administration and existing licensure standards.
- (3) Testing - The Board could have input in the development of standards for licensing of nursing homes as developed by DHEC. Currently these standards serve as the basis for a portion of the nursing home administrators' licensing exam.

Officials at DHEC have told the Audit Council that they can take over the administrative functions of the Board and could also proctor the licensing examination without any additions to their present staff (see Appendix 1). The facilities and expertise for this task already exist since DHEC currently administers several examinations, such as the examination for licensure of Hearing Aid Specialists. This transfer would save the State approximately \$10,000 annually which is currently being spent in the administration of the Board. This savings could either be placed in the General Fund or be used to significantly reduce license fees.

The U. S. Department of Health, Education and Welfare has ruled that this type of consolidation is permissible provided that "...the Board retain its autonomy and its policymaking power." Currently in South Carolina several Boards exist within larger State agencies such as the Board of Environmental Systems Operators located in DHEC and the Board of Landscape Architectural Examiners located in the Land Resources Conservation Commission. The relationships between these Boards and the larger agencies has been structured so as to conform to all applicable State and Federal laws. Similarly the Board of Examiners for Nursing Home Administrators can be placed within DHEC for administrative purposes and still retain its autonomy and policymaking powers. This type of consolidation between the Board and DHEC can be accomplished easily and with no violation of Federal law. Besides the annual savings of \$10,000 which would result in increased State revenue or fee reduction, the greatest benefit will be the increased coordination between the Board, which is responsible for licensure and oversight of nursing home administrators and DHEC, which is responsible for licensure and oversight of nursing homes.

### RECOMMENDATION

THE SOUTH CAROLINA BOARD OF EXAMINERS  
FOR NURSING HOME ADMINISTRATORS SHOULD  
NOT BE TERMINATED. HOWEVER, THE BOARD  
SHOULD BE PLACED UNDER THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL. DHEC  
SHOULD ASSUME THE ADMINISTRATIVE FUNCTIONS  
OF THE BOARD UTILIZING ITS EXISTING RESOURCES  
AND BOARD STAFF SHOULD BE ELIMINATED.

## INTRODUCTION

Act 608 of 1978 mandates the establishment of "...A System for the Review, Termination, Continuation or Reestablishment of State Agencies, Boards, Departments and Commissions." This is commonly referred to as the "sunset" review. Under this section of the law the General Assembly of South Carolina finds that there has been a "substantial" growth in the number of governmental entities and that this process has occurred "...without sufficient legislative oversight, regulatory accountability or a system of checks and balances." Therefore, the General Assembly has set up a process for the "systematic review" of certain governmental entities so that it might be in "a better position to evaluate the need for their continuation, reorganization or termination." Section 6 of the Act lists 40 agencies, boards and commissions which are to be reviewed and sets termination dates for those entities.

Section 2 of Act 608 provides that twelve months prior to the termination date of an agency or board the Legislative Audit Council furnish the State Reorganization Commission and the General Assembly a "review of the specific programs or functions administered by such agency or board." As a part of this review and evaluation the Audit Council is to provide information germane to the following issues:

- (1) The amount of the increase or reduction of costs of goods and services caused by the administering of the programs or functions of the agency under review;
- (2) Economic, fiscal and other impacts that would occur in the absence of the administering of the programs or functions of the agency under review;
- (3) The overall cost, including manpower, of the agency under review;



- (4) The efficiency of the administration of the programs or functions of the agency under review;
- (5) The extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates;
- (6) The extent to which the agency duplicates the services, functions and programs administered by any other State, Federal, or other agency or entity;
- (7) The efficiency with which formal public complaints filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review have been processed;
- (8) The extent to which the agency under review has complied with all applicable State, Federal and local statutes and regulations.

The following audit and evaluation presents the Audit Council's findings concerning these and other issues. Also included are recommendations concerning the continuation, reorganization or termination of the agency reviewed.

In conducting this review the Audit Council examined and analyzed all policies promulgated by the Board. All applicable State and Federal regulations were also reviewed. Files and records of the Board were analyzed including budgeting and complaints data. Interviews were also held with Board staff and members, DHEC staff, industry representatives and current licensees. This report is divided into three sections; background and history, issues and findings and sunset issues and evaluation.

## BACKGROUND AND HISTORY

### Nursing Home Care in South Carolina

The provision of nursing home care in South Carolina has become a large industry. There are 177 licensed nursing homes in the State containing 11,174 patient beds. The estimated cost of nursing home care is \$140.9 million annually.

Nursing homes are licensed to operate by the Department of Health and Environmental Control (DHEC). In addition DHEC certifies nursing homes in accordance with standards promulgated by the Federal Government. This certification is necessary for the facility and its patients to qualify for Medicare, Medicaid and other Federal funding. The licensure and certification process includes inspection of the physical facility, verification of records concerning the level of patient care, evaluation of administration and the measurement of compliance with applicable laws and regulations. Also the industry itself performs inspections of nursing homes. The American Health Care Association has developed the "Peer Review Program." Under this system, volunteer members make on-site inspections of health care facilities and work with the facility toward correcting weaknesses.

These types of evaluation only measure performance after-the-fact. The greatest degree of performance control can only be achieved by regulating those who will be permitted to make management decisions in health care facilities. The ultimate responsibility for the operation of any nursing home lies with the administrator. In order to ensure that these administrators possess an adequate level of knowledge and skill the Federal Government requires that they be licensed by a Board of

experts which sets strict standards. In South Carolina, this is the duty of the Board of Examiners for Nursing Home Administrators.

#### State Board of Examiners for Nursing Home Administrators

The Board of Examiners for Nursing Home Administrators was created by Act 984 of 1970. Statutes governing the Board and nursing home administrators are contained in Section 40-35-10 of the 1976 Code of Laws. State law provides that the Board consist of nine members. Membership of the Board is as follows:

- 4 - qualified nursing home administrators
- 1 - qualified hospital administrator
- 1 - medical doctor
- 1 - nurse educator
- 1 - certified public accountant
- 1 - member of the general public

Board members are appointed by the governor for three year terms. Membership is limited to no more than two full consecutive terms. The Board is required to meet at least twice a year.

State law provides the Board with several duties and responsibilities, as follows:

- (a) "Develop, impose and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to ensure that nursing home administrators will be individuals who are of good character and are otherwise suitable and who, by training or experience in the field of institutional

administration, are qualified to serve as nursing home administrators.

- (b) Develop and apply appropriate techniques, including examination and investigation, for determining whether an individual meets such standards.
- (c) Issue licenses to individuals determined, after application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the Board in any case where the individual holding such license is determined substantially to have failed to conform to the requirements of such standards.
- (d) Provide necessary programs of training and instruction to enable all individuals granted a waiver to attain the qualifications necessary to meet the standards established by the Board for licensure, and to apply for, accept and administer Federal assistance to implement such programs.
- (e) Conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State, with a view to the improvement of the standards imposed for the licensing of such standards with respect to administrators of nursing homes who have been licensed as such."

As stated in the Board's Five Year Plan, "the objective of this program is continued improvement of long term health care to the convalescent and the terminally ill, by escalating educational requirements for licensure,

by improving standards and increasing the public's awareness of their responsibility for reporting deficiencies."

#### Budget and Staff

During FY 77-78 Board expenditures totaled \$13,239. The majority of this money was used for personnel, per diem for Board members and contractual services. The FY 78-79 budget totals \$14,085 and reflects similar expenditure trends (see Table 1). The Board's Five Year Plan projects that by FY 83-84 expenditures will total \$25,418. This increase is based mainly on the effects of inflation and a moderate growth in the number of applicants for licensing.

The Board employs one part-time staff member. The staff member devotes approximately 20 hours per week to Board-related tasks and 10 hours per week to performing clerical and reporting duties required by the State.

TABLE 1  
SOUTH CAROLINA BOARD OF EXAMINERS FOR  
NURSING HOME ADMINISTRATORS

Statement of Sources and Uses for the  
Five-Year Period Ended June 30, 1978

SOURCE OF FUNDS:	<u>1973-74</u>	<u>1974-75</u>	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>
Renewal Fees	\$ 8,600	\$ 4,500	\$ 7,200	\$ 9,720	\$ 8,500
Registration/ Licensing Fees	2,400	5,200	6,400	3,500	3,500
Processing/Exam- ination Fees	1,520	2,200	2,040	1,640	1,440
Other Fees	19	-	156	122	80
Refunds	<u>-880</u>	<u>-1,800</u>	<u>-2,120</u>	<u>-1,440</u>	<u>-</u>
TOTAL FUNDS	<u>\$11,659</u>	<u>\$10,100</u>	<u>\$13,676</u>	<u>\$13,542</u>	<u>\$13,520</u>
USE OF FUNDS:					
Personal Services	\$ 3,845	\$ 5,171	\$ 4,622	\$ 7,369	\$ 7,492
Travel	902	751	940	695	486
Telephone	331	382	512	688	362
Repairs	-	50	50	55	100
Examination Services	33	1,050	1,000	700	1,025
Other Contractual Services	276	-	-	113	36
Office Supplies	458	705	517	497	280
Postage	218	266	277	420	389
Rents	1,016	1,094	1,095	1,495	1,038
Insurance	68	244	350	75	157
Equipment	178	254	-	-	628
State Employer Contributions	539	687	895	-	1,246
Answering Service	385	276	294	324	-
Miscellaneous	65	57	17	-	-
Printing, Binding, and Advertising	<u>707</u>	<u>622</u>	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL EXPENDITURES	<u>\$ 9,021</u>	<u>\$11,609</u>	<u>\$10,569</u>	<u>\$12,431</u>	<u>\$13,239</u>

Source: South Carolina Budget and Control Board.

## The Federal Role

During the past few decades there has been an increasing Federal interest in nursing homes and nursing home administration. As a result of the Social Security Act of 1935, Federal funding was first made available for the care of the elderly. This initiated a significant growth in nursing home facilities, predominately, privately-owned facilities. Most of these homes were operated for profit, had few trained personnel and provided inadequate care. In 1951, the Kerr-Mills bill provided Federal funds for nursing home care in states which had established licensing standards and inspection programs for these facilities. However, many of these State standards and programs placed emphasis on the physical facility rather than the quality of care. Many nursing homes still had an inadequate level of patient care.

Many of these continuing concerns were addressed by the Medicare, Medicaid and Social Security legislation of the late 1960's. This type of legislation sought to mandate a higher level of care for the large number of patients who would be affected by these new programs. One major component of this upgrading was the requirement that nursing home administrators be tested and licensed. This was a result of the 1967 amendments to the Social Security Act. This legislation required that all nursing homes be supervised by a licensed administrator and that:

"Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the Healing Arts Licensing Act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this Section."

As a result of this legislation the South Carolina State Board of Examiners for Nursing Home Administrators was created in 1970. The Federal

legislation also specified the functions and duties of these licensing agencies or boards (see Appendix I). The 1970 South Carolina legislation creating the Board closely follows this assignment of duties and responsibilities.



## ISSUES AND FINDINGS

### Lack of Complaint Investigation

The Board does not actively engage in any investigation of complaints against nursing home administrators even though its enabling legislation and statement of mission mandates that it do so. Currently, this duty is conducted by two other State agencies. Even with other State agencies performing investigations, the Board has made no efforts to follow up on the results of these complaints.

At present the Board lacks the capabilities to investigate complaints due to staff limitations (the Board has one part-time employee). But the fact that this capability has not been developed and that there is little coordination between the Board and the agencies who do investigate complaints points to an absence of administrative direction in this area.

Legislation creating the Board states that one of its duties is:

...revoke or suspend licenses previously issued by the Board in any case where the individual holding such license is determined substantially to have failed to conform to the requirements of such standards.

The Audit Council has determined that the only way this duty can be adequately carried out is through active investigation of complaints and allegations. The Board's Mission Statement, as given in its Five Year Plan reveals:

It is then (The Board's) duty and responsibility to develop and apply appropriate techniques including examination and investigation, for determining whether an individual meets such standards as developed by the Board.

Any individual who is licensed by the Board should be expected not only to meet the initial licensure standards but to maintain them. It is the Board's duty to investigate allegations that its established standards

have been violated. In addition, the Federal Regulations which mandate the establishment of the Board requires that it:

Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the board...

The Council found documentation of only nine complaints which the Board had received against nursing home administrators during its nine years of existence. The only action taken was to refer them to other State agencies. This is by no means the total number of complaints lodged against nursing home administrators. Two other State agencies, the Governor's Office (Nursing Home Ombudsman) and the Department of Health and Environmental Control, receive and investigate complaints dealing with nursing homes. DHEC, in particular handles complaints regarding the quality of care at nursing homes. During calendar year 1978, DHEC received 46 complaints. Since these allegations addressed the quality of care at nursing homes and since the nursing home administrator is ultimately responsible for maintaining an adequate level of patient care, it can be strongly inferred that these complaints represent 46 cases of possible inadequate administration.

Also, according to Board records, no effort was made to follow up on the results of the nine complaints forwarded by the Board to these other State agencies. And, there is no record of the Board having any knowledge of the 46 complaints made to DHEC during 1978 or any previous year.

There are several ramifications to the lack of complaints investigation by the Board. Primarily, the Board is not fulfilling its stated mission and is not complying with State law and Federal Regulations. Also, the Board's effectiveness is significantly reduced. Under the present system it is possible for a nursing home administrator to have

several complaints against him and still be relicensed with no problem. Also, since there is little coordination with other agencies, the Board does not have a true outlook of the actual condition of the nursing home industry in South Carolina and its problem areas. This reduces the ability of the Board to set meaningful standards for licensure. Overall, this situation points to a lack of responsiveness by the Board to the needs of the consumer and a lack of mechanisms for accountability of nursing home administrators.

#### Inappropriate Licensure Requirements

The Audit Council has determined that many of the requirements for licensing nursing home administrators may unduly restrict entry into the nursing home profession and are largely ineffective in upgrading the quality of nursing home administrators.

The primary duty of the Board is the licensing of qualified applicants. South Carolina statute provides that "no nursing home shall be operated or licensed to operate except under the supervision of a licensed administrator." At the end of FY 77-78 there were 213 nursing home administrators licensed in the State. Qualified applicants in South Carolina must be at least 21 years of age, be of "good moral character" and be a citizen of the United States. In addition, applicants must have a high school degree, two years of college level study and at least two years practical experience in nursing home administration or related health care administration.

The requirements that a qualified applicant be a United States citizen has little bearing on the ability of an individual to adequately administrate a nursing home or be responsive to health care needs. In addition, this requirement may be unconstitutional.

Section 40-30-35 of the S. C. Code of Laws mandates that an applicant for licensure must be at least 21 years of age. However, age requirements seldom have a direct bearing on competency and can serve to restrict entry into a field. Also due to the length of time necessary to complete the educational and experience requirements few applicants if any would be eligible for licensure before attaining 21 years of age.

The Board requires that an applicant be of "good moral character," yet this term is not defined. Also, it is beyond the Board's regulatory mission to define and enforce standards of morality. Subjective requirements such as "good moral character" and other vague terms should be replaced by more objective criteria.

Currently the Board requires a candidate to have a high school diploma and two years of college level study. Beginning on January 1, 1980, this requirement escalates to a completion of a four-year degree program. However, there are no requirements specifying that the applicant must have formal education in any field relating to health care or administration. Although this policy has the effect of raising the general education level of the potential administrator it does not guarantee that the level of formal expertise in health care administration is enhanced.

Although the Audit Council has determined that there have been no detectable efforts by the Board to restrict entry into the profession, the potential for abuse still exists. The major effect of these licensure requirements is that the standards they represent do not adequately address the issue of administrative competency or significantly upgrade the quality of nursing home administrators in South Carolina.

## Examination

Qualified applicants are required to take a two-part examination. This exam is administered by the Board in Columbia twice a year. Part one is a national examination consisting of 150 questions. This exam is prepared by the Professional Examination Service (PES). According to the American College of Nursing Home Administrators, South Carolina is one of 19 states who use PES. Part two of the exam consists of 25 questions based on South Carolina standards for licensing of nursing care facilities as developed by DHEC. In order to receive a passing grade, the applicant must answer 100 PES questions correctly and 15 South Carolina questions correctly. The exam may be retaken in the event of failure.

During FY 77-78, 41 applicants were tested. Of these, 26 passed both sections of the exam and six failed both sections. An additional nine applicants failed the South Carolina part only. Over the past three years the rate of applicants passing the exam has greatly increased. According to the Board, this is because the educational and experience requirements are higher for an applicant than in the past. In calendar year 1976 only 51% passed both parts, but by 1978 86% of applicants passed both parts (see Table 2).

TABLE 2  
STATISTICAL DATA ON EXAMINATIONS  
FOR THE PAST THREE YEARS

<u>DATE</u>	<u>PASS</u>		<u>FAIL</u>		<u>RETAKES</u> <u>S.C.*</u>
	<u>PES</u>	<u>S.C.</u>	<u>PES</u>	<u>S.C.</u>	
1-21-76	9	14	11	6	1
7-21-76	11	11	8	8	2
1-19-77	5	7	4	2	1
7-20-77	14	13	2	3	2
1-18-78	14	9	3	8	6
5-10-78	7	6	1	2	1
11-8-78	15	13	2	3	2

\* This column shows the number of candidates who passed the PES, failed the S.C., and applied to retake the S.C.

Source: State Board of Examiners for Nursing Home Administrators.

### Fees

The total operating expenses for the Board are derived from licensing fees. The fee for initial application and testing is \$40. Initial licensing is \$100. The license is renewed on a biennial basis at a cost of \$100 (see Table 3).

TABLE 3  
SCHEDULE OF FEES

Applications	\$ 40
Initial Licensing Period	100
Biennial Renewal of License	100
Certificate Replacement	5
Administrator in Training	100 Per Annum

On the average South Carolina license fees are high when compared to the rest of the country. This is because there are fewer nursing homes in South Carolina than many other states. The national average is \$34.86 per year as opposed to \$50 in South Carolina. Georgia charges \$37.50 per year while North Carolina requires \$50 per year. In FY 77-78 the various fees charged by the Board generated \$13,520. The Board estimates this will climb to \$15,660 in FY 78-79 and \$17,400 by FY 79-80.

Emergency Licensing

The Board has the authority to issue emergency temporary licenses in the event of the unexpected death or departure of a nursing home administrator. The nursing homeowner may designate the person to hold this license. The applicant must meet all requirements for licensure except the two years of practical experience and must take the examination on the next date it is given. During FY 77-78, 22 temporary emergency licenses were issued.

### Reciprocity

The Board has no formal agreements with other states concerning reciprocal licensing of applicants. Most other states also have no reciprocal agreements. However, an out-of-state applicant will be issued a license if he meets the following requirements:

- The state of origin has licensing and examination standards equal to South Carolina's.
- The applicant's score on the exam is equivalent to a passing grade in South Carolina.
- The applicant is a resident of or is committed to a job in South Carolina.
- The applicant passes the South Carolina portion of the exam.

### License Revocation

Even though there have been a number of complaints and allegations filed against nursing home administrators, only two of these administrators have had their licenses revoked. This is because the Board does not investigate complaints or seek the results of investigations conducted by other agencies.

As the law states, it is the duty of the Board to revoke or suspend licenses "...in any case where the individual holding such license is determined substantially to have failed to conform to [standards set by the Board]." During its nine-year existence the Board has only suspended two non-emergency licenses. In these two cases the suspended individuals were convicted of conspiracy to defraud the Federal Government. According to the National College of Nursing Home Administration, 95 licenses were revoked by all states in 1976 alone. Since the Board is not actively involved in complaints investigation nor aware of



investigations by other State agencies, few nursing home administrators have or will lose their licenses due to unethical practices.

#### Lack of Continuing Education Requirements

South Carolina has no requirements which mandate continuing education in order for a nursing home administrator to be relicensed. In nearly every professional field, continuing education is recognized as an important tool in maintaining a high level of expertise within the profession. This fact has also been recognized by many states which license nursing home administrators. Currently 40 states have continuing education requirements for nursing home administrators. The number of hours required ranges from 10 to 50 per year; however, the national average is 24 hours. These seminars and classes are generally sponsored by professional associations and feature acknowledged experts and lecturers.

Even though the Board has not provided leadership in developing continuing education standards in South Carolina, the State's Chapter of the American College of Nursing Home Administrators has expressed interest in this area. As a December 1978 letter to the Attorney General by the ACNHA states:

...it is the feeling of the great majority of administrators that this [continuing education] should be a requirement for renewal of their licenses in order to strengthen the profession as a whole. Continuing education has been shown to improve the level of care to nursing home residents... [and]...would enhance our profession by weeding out those administrators who are not totally committed to quality care...

Due to the lack of continuing education requirements, South Carolina is not assured that its nursing home administrators are abreast of the

latest improvements and changes in health care. This has a direct and often important effect on the quality of care for patients in nursing homes.

#### Public Participation

The Board has made little effort to ensure an adequate level of public participation or public awareness of its activities. During its nine-year existence the Board has issued only two public notifications of Board meetings (December 1978 and June 1979). According to the Board's Five-Year Plan, one of the major program objectives is "...increasing the public's awareness of their responsibility for reporting deficiencies." The Board issues press releases twice a year describing the licensing examination and announcing the dates it is given.

#### Conclusion

The Board of Examiners for Nursing Home Administrators performs a needed service and is mandated by Federal law. The Audit Council has concluded that the Board should not be terminated. However, the Council does recommend that the Board be placed under DHEC and that DHEC assume the administrative functions of the Board. This consolidation should result in increased efficiency in major areas of regulation such as licensing, complaints investigation and licensee evaluation. It should also result in significant cost savings.

The Audit Council has identified several problem areas where improvements are necessary. The Board does not actively investigate complaints. Many licensure requirements are ineffective and restrict

entry into the field. The Board lacks requirements for continuing education of administrators. Also there has been little effort to encourage public participation. The merger of the Board with DHEC, along with adoption of the following specific recommendations regarding these problem areas, should greatly increase the efficiency and effectiveness of the Board, significantly decrease the cost of regulation and better serve the needs of the public.

#### RECOMMENDATIONS

THE BOARD SHOULD CLOSELY COORDINATE ITS ACTIVITY IN THE AREA OF COMPLAINTS INVESTIGATION WITH THAT OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL. THE BOARD SHOULD CONSIDER THE COMPLAINTS RECORD AND PROFESSIONAL EVALUATION OF EACH ADMINISTRATOR BEFORE RELICENSING.

SECTION 40-35-30 OF THE 1976 SOUTH CAROLINA CODE OF LAWS SPECIFYING QUALIFICATIONS OF LICENSEES SHOULD BE AMENDED TO:

- (1) OMIT THE MINIMUM AGE REQUIREMENT FOR LICENSURE.
- (2) OMIT THE CITIZENSHIP REQUIREMENT FOR LICENSURE.

THE USE OF "GOOD MORAL CHARACTER" REQUIRE-  
MENT FOR LICENSURE SHOULD BE ELIMINATED  
OR DEFINED.

THE BOARD SHOULD ESTABLISH AND MAINTAIN  
STANDARDS FOR A PROGRAM OF CONTINUING  
EDUCATION FOR NURSING HOME ADMINISTRATORS.  
NONCOMPLETION OF ESTABLISHED MINIMUM  
REQUIREMENTS SHOULD SERVE AS THE BASIS  
FOR LICENSE REVOCATION OR SUSPENSION.

## SUNSET ISSUES AND EVALUATION

Act 608 of 1978, known as the Sunset Law, contains a series of eight issues which must be addressed in the review of each agency. These requirements encompass the areas of efficiency and effectiveness which will help determine the termination, continuation, or reestablishment of the agency and will also supply to the General Assembly an indication of the agency's public responsiveness and regulatory compliance. A summary of these issues and the Audit Council's responses are presented in the following section.

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The programs and functions of the Board do not directly affect the cost of nursing home care in South Carolina. However, as the Board points out, "a better trained and licensed administrator could reduce costs by more efficiently operating the facility, or he could increase costs by providing better and more sophisticated health care." The Audit Council found no measurable cost increases or reductions as a direct result of the existence or actions of the Board.

- (2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

Since the existence of the Board is mandated by Federal Regulations, many nursing home patients would lose Medicaid, Medicare and other benefits if the Board were terminated. This would make it financially prohibitive for many patients to remain in nursing homes and place additional financial burdens on their families and in some cases, the State. The existence of the Board was mandated by law in order to address the problem of substandard administration in nursing homes. Without continued regulation it is likely this problem would reoccur. However, the consolidation of the Board within DHEC should result in increased regulatory efficiency and effectiveness at a significantly lower cost to licensees and the State.

- (3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The overall cost of the agency in FY 77-78 was \$13,239. The projected FY 78-79 expenditures are \$14,085. All expenditures are recouped through the charging of fees (see p. 11).

- (4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The main function of the Board is the testing and licensing of applicants. The Board has developed standards and guidelines in this area and carries them out in an efficient manner (see p. 18).

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

There has been little effort to ensure an adequate level of public participation by the Board. In nine years only two Board meeting have been publicly announced. The Board has two public members. All other members represent health care fields (see p. 23).

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

The Board does not duplicate the services, functions and programs of any other State, Federal or local government entity. However, the Board's responsibility for complaint investigations are actually performed by two other State agencies. If the Board were to fully carry out its legal requirements it would be duplicating the services currently provided by DHEC and the Governor's Office. The consolidation of the Board with DHEC would preclude this type of duplication of services and would increase efficiency (see p. 14).

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

Formal complaints are referred to DHEC and the Governor's Office. Although the law states that the Board has the responsibility to

investigate complaints, in actuality it does not conduct investigations. The Board has made no effort to follow-up on the complaints it refers and has no knowledge of additional complaints made directly to these two agencies. Due to this inaction consumers are inadequately protected and administrators are not fully accountable (see p. 15).

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The Board has not complied with Federal Regulations (Section 1908) and State statutes (Section 40-35-90 of 1976 Codes) which mandates that it investigate complaints (see p. 15).



## APPENDICES

# South Carolina

## Department of Health and Environmental Control

### APPENDIX I

#### BOARD

William M. Wilson, Chairman  
William C. Moore, Jr., D.M.D., Vice-Chairman  
I. DeQuincey Newman, Secretary  
Leonard W. Douglas, M.D.  
George G. Graham, D.D.S.  
J. Lorin Mason, Jr., M.D.  
C. Maurice Patterson

#### COMMISSIONER

Albert G. Randall, M.D., M.P.H.  
2600 Bull Street  
Columbia, S.C. 29201

May 25, 1979

Mr. George L. Schroeder, Director  
Legislative Audit Council  
500 Bankers Trust Tower  
Columbia, South Carolina 29201

Dear Mr. Schroeder:

The staff of your office has met on several occasions with members of my staff to discuss the Audit Council's Sunset evaluation of the Board of Examiners for Nursing Home Administrators.

DHEC agrees with the conclusion that it would be more efficient and effective to place the Board in our Office of State Health Planning and Development. This should result in the following benefits:

1. Because of the Licensing and Certification process we are in the best position to evaluate the effectiveness of the Administrators at no additional cost to the State and direct continuing education in those areas of need;
2. Monetary savings due to DHEC's use of its existing equipment, office space and sharing of personnel to perform the administrative and clerical functions now being performed by the Board;
3. DHEC staff will be available to conduct complaint investigations of nursing home administrators for the Board; and
4. DHEC expertise in the health care field would be available to the Board.

APPENDIX I (CONTINUED)

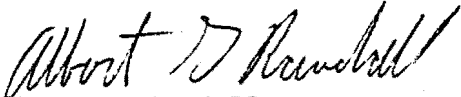
Mr. George L. Schroeder  
May 25, 1979

Page 2.

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It is our understanding that in accordance with State Law, the Board would retain its autonomy and policy-making powers. However, the overall result of this consideration would be a greater degree of coordination between DHEC, which licenses and certifies nursing homes, and the Board, which licenses nursing home administrators. Also increased efficiency and effectiveness would result while overall costs should decrease.

Sincerely,

A handwritten signature in cursive script, appearing to read "Albert C. Randall".

Albert C. Randall, M.D., M.P.H.  
Commissioner  
South Carolina Department of Health and  
Environmental Control

AGR:JRC:wjs

APPENDIX II  
FEDERAL REGULATIONS FOR LICENSING  
NURSING HOME ADMINISTRATORS

It shall be the function and duty of such agency or board to:

- (1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;
- (2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;
- (3) issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the Board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;
- (4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;
- (5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the Board to the effect

that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards; and

- (6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

Source: Federal Regulations, April 1978, Section 1908.

APPENDIX III  
SOUTH CAROLINA  
STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS  
POST OFFICE BOX 11477 . CAPITOL STATION  
TELEPHONE 803 758-3652  
COLUMBIA, SOUTH CAROLINA 29211



June 15, 1979

Mr. George L. Schroeder  
Executive Director  
Legislative Audit Council  
State of South Carolina  
Bankers Trust Tower, Suite 500  
Columbia, South Carolina 29201

Dear Mr. Schroeder:

The S. C. State Board of Examiners for Nursing Home Administrators appreciates this opportunity to respond to the Legislative Audit Council's review of this agency with regard to the Sunset Law. The response follows:

The review of the Legislative Audit Council constitutes a current assessment of the S. C. State Board of Examiners for Nursing Home Administrators based on limited cross-sectional information focused on reduction of fiscal expenditures.

The great changes occurring in the profession of nursing home administrators and the nursing homes that they administer provides a framework of development of the S. C. State Board of Examiners for Nursing Home Administrators. When the Board was founded almost a decade ago, there were essentially no standards for entry or performance of administrators of nursing homes in the State, no educational programs for their preparation and no means of responding to complaints of personal and professional incompetence or fraud of persons operating nursing homes. Within less than a decade, the Board brought about great changes.

1. Criteria for entry into positions for nursing home administrators have been established, with related procedures for application, examination, licensure, and relicensure.
2. These criteria are being modified and elevated as the applicants to this field of health manpower improves in quality.

A review by an outside agency, such as the Legislative Audit Council, is timely. The Board of Examiners also is currently reviewing its functions and planning for next steps, such as:

1. Revising the content of the licensure examination to more precisely test the competence to function of nursing home administrators;
2. Exploring ways to stimulate the formation of baccalaureate level programs of study for nursing home administrators that would be more available throughout the state, possibly via ETV; and
3. Exploring the issue of continuing education, peer review, and/or other recognized means of maintaining competence of nursing home administrators.

The Board appreciates the value of many of the recommendations of the Legislative Audit Council, especially that the Board of Examiners for Nursing Home Administrators should be more effective with regard to complaints and should have begun active consideration of continuing education earlier. However, there are several points to consider.

#### Continuing Education

The Board of Examiners was advised by the Assistant Attorney General in 1970-71, during the development of its rules and regulations that South Carolina's constitution prohibited requiring continuation. This is documented in the Minutes of September 9, 1970 (Appendix E) and the Minutes of January 8, 1971. Consequently, the Board believed that it could take no authoritative position on the requirement of continuing education, but applicants for licensure and licensees have been encouraged to attend courses and seminars in health care. Evidence of their attendance, when it is provided, is included in their personal files.

From time to time, the possibility of requiring continuing education without authority has been considered, also the possibility of presenting an educational program with the assistance of other organizations, and promoting participation as a desirable, self-improvement action, although not a mandatory one. But the Board felt that little change or benefit would be derived from this effort - those who are already upgrading their education would continue to do so, and those who are not would not be motivated to begin.

Last year the present Chairman of the Board again raised the question of there being a law which prohibits requiring continuing education, at a meeting with the Assistant Attorney General. He was advised that no law exists to prohibit such a requirement, although the rumor is prevalent and persists among the various regulatory boards. The Assistant Attorney General said that continuing education can, in fact, be required if it is written into a board's enabling legislation.

The Board of Examiners for Nursing Home Administrators began immediately to consider the means of establishing such a program.

Investigation of Complaints

The Legislative Audit Council reports that only nine complaints have been received by the S. C. State Board of Examiners for Nursing Home Administrators during the nine years the Board has existed. A perusal of the general files gives the impression that fewer complaints were received than actually have been. However, large numbers of complaints have never been registered with the Board.

It has been the practice of the Board to place complaints in the personal folder of the administrator against whom the complaint was made. If the complaint was against the facility in general, or its other personnel, and did not specifically accuse the administrator, the complaint was placed in the general files.

During this year, a "Complaint File" has been set up in which all complaints are being placed.

The Board does not receive fees in an amount to afford investigative services, therefore, it has used the office of the Ombudsman, the Peer Review System, and the investigative arm of the Division of Health Licensing of the S. C. Department of Health and Environmental Control (DHEC) for this purpose. The latter in particular, since their enabling legislation, at one section, overlaps that of the Board of Examiners for Nursing Home Administrators.

All complaints to the Board have been referred to DHEC, but that agency does not report violations by administrators, nor complaints against them, to this Board. The Legislative Audit Council report stated that DHEC received 46 complaints this year, and further commented that some these complaints likely involved administrators. The latter part of the statement could be accurate, but the Board can hardly be found at fault for not taking action when they were not informed that a complaint had been registered.

The Board acknowledges that its "capacity to investigate has not been developed and there is little coordination between the agencies . . . ." We recognize the need for investigation, and we recommend that it be accomplished through coordination and communication between DHEC and this Board rather than by placing the Board of Examiners for Nursing Home Administrators under the administration of DHEC.

Reporting violations and deficiencies which are observed during routine investigations could quite easily be reported to the Board, as well as investigations of specific complaints. An investigator for the Board would be a duplication of personnel since DHEC has a staff trained to do this type of investigation. Reports by DHEC staff would require minimal time and cost, but it would keep the Board informed. This arrangement would be efficient, economical, and productive.



Placing the Board under the administration of DHEC, as recommended by the Legislative Audit Council, would so fragmentize the Board that its autonomy would be lost along with its value to the public, therefore, we disagree with their suggested organizational plan.

#### Public Participation

The Board of Examiners for Nursing Home Administrators is comprised of nine members. Two of these are consumer members. One is appointed from the State at Large and one from nominations made by the S. C. Association of the American Institute of Certified Public Accountants.

Public members have held an office on the Board since mid 1974, ensuring that the public is represented at all meetings of the Board. Notification of meetings were not sent to the news media until after the Freedom of Information Act was passed, due to the confidential nature of the discussions in the meetings. These discussions included evaluation of applicants, examinations and grades.

Since the Freedom of Information Act was passed, the Board sends notice of its meetings to the local media, as mandated by law, and to any other news source which requests the information, and the public is welcome to attend.

Semiannually an article about the examination and licensing of nursing home administrators is sent to 30 newspapers throughout the State for publishing. Included in this article is the address and telephone number of the office of the Board, so that any reader who wishes may contact the Board for more information.

#### Cost Evaluation

The Board operates efficiently and thriftily within its revenue. It employs one person, paid on an hourly basis, who works an average of 25 hours per week conducting the business of the Board and approximately five hours on State administration - more or less time for each as the workload requires.

The Board occupies one small office, economically but adequately furnished and borrows the conference room of other State agencies for meetings and examinations. There are few expenditures that could be eliminated or reduced. Regardless of the final determination concerning the future of this Board, an employee must be paid to do the work and a location for it must be provided. These two items, salary and rent, plus per diem and travel expense comprise the largest percentage of the budget.

The Board questions the accuracy of a DHEC official's estimate that \$10,000 could be eliminated from the Board's present budget of approximately \$13,500 and the program still be administered on the current level.

#### Recommendations for Change

The Board considers merging with DHEC as most inappropriate. The Board exists as a legal arm of the State Government to ensure the enforcement

of an act passed to protect the public by controlling the quality of administrators of nursing homes. If this function were delegated to DHEC, it would be quickly submerged in the complexity of this large bureaucratic agency and relegated to low priority, far below the many functions of public health promotion and environmental health control.

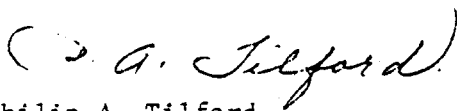
If the S. C. Reorganization Commission deems that the several boards regulating the licensure and control of health manpower, of which there are only a few in each category, can be more expeditiously and economically administered by a joint board of health manpower, then the S. C. State Board of Examiners for Nursing Home Administrators would be in agreement with such a plan and would work cooperatively in the transition to such an organization. Such a transition could be achieved without failure of the Board of Examiners to carry out its function provided the following conditions are met:

1. The Board of Examiners for Nursing Home Administrators will continue with its present constituency to determine policy, standards, procedures, rules and regulations necessary to carry out the South Carolina laws controlling the examination and licensure of persons as nursing home administrators and for ensuring maintenance of their competence to practice.
2. The current staff member, who has worked assiduously for the past four years to administer the current rules and regulations, will be employed in a position in the new organization to provide continuity of the work of the Board.
3. The full scope of responsibilities of this Board and of other Boards of Examiners be reorganized and provisions made for the diverse kinds of staff and consultants needed to administer functions as various as: examination programs for competence, investigation and hearings regarding complaints, continuing education programs in the several health professions, and a unified staff to administer the joint board.

If these recommendations were put into effect, maximum service to the public would be achieved and the autonomy of the individual boards, joined in administration, would be maintained.

In conclusion, the S. C. State Board of Examiners for Nursing Home Administrators proclaims that this Board is an entity initiated and functioning by virtue of State and Federal Law and must be autonomous; and as such, cannot be placed under any other State Agency.

Respectfully Submitted,

  
Philip A. Tilford  
S. C. STATE BOARD OF EXAMINERS  
FOR NURSING HOME ADMINISTRATORS

PAT/bc